IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 968 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

NARENDRASINH R. RAVALJI

Appearance:

1. Criminal Appeal No. 968 of 1993

MR KG SHETH APP for Petitioner No. 1

MR AM VAHORA for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 20/11/2002

ORAL JUDGEMENT

#. The appellant State of Gujarat has challenged by filing this appeal, the order of acquittal recorded by

the learned Additional Sessions Judge, Kheda at Nadiad in Criminal Appeal No. 22 of 1991 filed by the respondent accused and while allowing the appeal of the respondent on 28th May, 1993 had quashed and set aside the order of conviction and sentence recorded by learned Assistant Sessions Judge, Nadiad dated 16.7.1991 passed in Sessions Case No. 28 of 1991, wherein, the learned Assistant Sessions Judge has convicted the respondent accused for the offences under Sections 376, 323 and 452 of the I.P.C. and ordered to suffer R.I. for 3 years and fine of Rs.2000/- and in default of fine, further R.I. for 6 months for offence under Section 376 of the I.P.C. and ordered to suffer R.I. for 15 days for the offence under Section 323 of the I.P.C. and also ordered to suffer R.I. for 6 months and fine of Rs.500/- and in default of fine to undergo further R.I. for one month under Section 452 of the I.P.C.

#. Mr. Sheth, learned APP appearing for the Appellant State has taken me through the oral as well as documentary evidence recorded during the trail as well as judgement and order of conviction dated 16.7.1991 recorded by learned Assistant Sessions Judge, Nadiad in Sessions Case No. 28 of 1991 and judgement and order dated 28.5.1993 recorded by learned Additional Sessions Judge, Nadiad in Criminal Appeal No. 22 of 1991. It is the contention of Mr. Sheth that learned Appellate Court has committed error in appreciating the evidence while allowing the appeal of the respondent accused, which has resulted into miscarriage of justice. It is the contention of Mr. Sheth that evidence led by the prosecution to prove the guilt of the respondent accused is rightly appreciated by learned Assistant Sessions Judge and learned Assistant Sessions Judge has rightly accepted the prosecution case while convicting the respondent accused for the offences for which he was placed for trial and the learned Assistant Sessions Judge has recorded finding that the prosecution has established the case beyond reasonable doubt that the accused had committed offence of rape on deceased Mina, who was aged about 18 years and also assaulted the prosecution witness Rajendrasinh, for which the prosecution has established the case under Section 323 of the I.P.C. and further that the prosecution has established that accused has tress passed the house of the deceased Mina and therefore, the learned Assistant Sessions Judge has rightly held that accused has committed offence under Section 452 of the I.P.C. It is the contention of Mr. Sheth that the Appellate Court ought to have considered that as found during the evidence of the prosecution witness namely Rajendrasinh PW-6, who has seen the

accused in the house when the accused has tried to run away after committing rape on deceased Mina and at that time there was a scuffle between Rajendrasinh and accused and in the said scuffle Rajendrasinh had also sustained injuries on the middle finger on right hand and half nail of the middle finger was removed and his evidence is also corroborated with the medical evidence. According to Mr. Sheth medical evidence proves the injuries sustained by Rajendrasinh and therefore the Appellant Court has committed error in not accepting the evidence of the prosecution witness and thereby the order of acquittal recorded by learned Additional Sessions Judge, Nadiad deserves to be set aside.

#. During hearing, Mr. Sheth has taken me through the medical evidence in respect of rape committed by respondent accused on deceased Mina. According to Mr. Sheth that medical evidence also supports the prosecution case, for which he has taken me through the medical evidence namely the evidence of Dr. Champaklal Patel, who was attached with Anand Nagarpalika Hospital as Medical Officer.

#. To consider the submissions made before me and after going through the evidence recorded before the Trial Court, it is necessary for me to appreciate the contentions raised by Mr. Sheth. It is unfortunate that deceased Minaben has committed suicide. That the incident in question has happened on 31.12.1989. Deceased Minaben was studying in standard 12th and she was 18 years old. As per prosecution case, deceased Minaben was alone in her house which is situated at village Bhalej. As per prosecution case, at about 14 hours on 31.12.1989 deceased Mina was alone in her house and the accused had made an attempt to commit rape on her and assaulted Rajendrasinh - brother of the deceased and for which complaint was filed by Parvatsinh before the Umreth Police Station. Ex. 16 is the written application of complainant - Parvatsinh - father of the deceased. On the strength of the complaint filed by complainant, the said complaint was sent for investigation in favour of police authority at village Bhalej. The application (complaint) Ex. 16 was addressed in favour of Police Officer, Umreth. Reading the complaint Ex. 16, it shows that complainant Parvatsinh was residing at village Bhalej, Taluka Anand and he alongwith his wife had gone to village Gothda by railway train at 10 A.M. in the morning to meet his son in law and his daughter and in their absence, the accused Narendrasinh has committed rape on her daughter Mina. It is also stated in the complaint that at the relevant time

his son Rajendrasinh had reached at the house and he heard the shouts of her sister and there was a scuffle between Rajendrasinh and accused and in the said scuffle his son has lost his half nail of his middle finger of right hand and thereafter, his daughter Mina had left the house and committed suicide by falling in well. When they came from village Gothda, this occasion was conveyed by his son Rajendrasinh from village Bhalej and they went to police station at village Umreth. The complaint filed by complainant was entered in the station diary. As found from evidence of Natwarsinh PW-10 Ex.34, who is at the relevant time i.e. on 31.12.1989 working as Unarmed Head Constable and he was on duty at Umreth Police Station. He deposed that on 31.12.1989 at about 17.05 hours complainant Parvatsinh from village Bhalej had given an application in writing and on the strength of the said application he has made entry in the station diary and after making entry in the station diary, the application of the complainant was sent at Bhalej Out post Police Station. Ex. 35 is the entry in the station diary, which was made at 17.05 hours. The entry reflect that as per the complaint given by Parvatsinh, the said application was sent for further investigation. He has further deposed that on 1.1.1990 as per report submitted by Bhalej Out Post Police Station regarding AD report, the entry no. 15 was made and entered in the station diary. Ex. 36 reflects that as per the information of Janak Prabhatsinh Punjabhai, Bukkle No. 1610, Bhalej Bit, dead body of deceased Minaben @ Bakiben was taken out from the well.

#. The investigation of the said case was entrusted to Prabhatsinh Punjabhai. Said Prabhatsinh Punjabhai has deposed at Ex. 37 that after getting the complaint from Parvatsinh and on the strength of the entry made in the station diary at Umreth Police Station, he has carried out the investigation. He has deposed that as disclosed in the application (complaint) that Minaben has committed suicide by falling in well, he has tried to remove Minaben from the said well. As there was much water in the well, he has taken assistance of the persons from fire brigade. On 1.1.1990 at about 12 noon the fire brigade persons came and during that period, he has also drawn panchnama, which is on record of the case at Ex. 20. He has also drawn the panchnama of scene of offence. The fire brigade persons have taken out the dead body of deceased Mina from the well and inquest panchnama was also drawn in presence of the panchas. This inquest panchnama is on record of the case at Ex.22. He has made AD report and he has sent report to the Umreth Police Station and dead body was sent for post mortuam at Anand

Nagarpalika Hospital. On receiving the post mortuam report on the next day, he has registered the offence against the accused for the offence under Sections 376 and 452 of the I.P.C. Thereafter, arrest of the accused was effected under panchnama. He has also sent muddamal which was seized to the F.S.L. and further investigation of the case was handed over to PSI Shri Barda. It is the prosecution case that respondent accused has committed rape on deceased Mina and gave simple hurt to Rajendrasinh PW-6 during scuffle and thus, the accused has committed an offences punishable under Sections 376, 323 and 352 of the Indian Penal Code.

#. During trial, prosecution has examined PW -6 Rajendrasinh Parvatsinh Rawalji, PW-4 Parvatsinh Bhupatsinh Rawalji - Complainant - father of the deceased, PW-5 Ranchhodbhai Ambalal Rawalji, PW-7 Harmanbhai Umedbhai - Panch witness regarding panch to the panchnama to the scene of offence dated 1.1.1990, PW-8 Dashrathsinh Umedsinh Rawalji - panch witness for panchnama Ex. 21 dated 1.1.1990, PW-1 Dr. Champaklal O. Patel, Medical Officer attached to Anand Nagarpalika Hospital, who has performed the post mortuam of dead body of deceased Minaben on 1.1.1990 and he has also proved the P.M. Note and medical certificate pertaining to Mina, which are at Exs. 8 and 9 respectively, PW-2 Dr. Kakanat Matheve, who has examined accused Narendra Rawalji on 2.1.1990 and also produced medical certificate regarding injury on accused Narendra which is at Ex.12, PW-3 Dr.Abdul Ahemad Rasulbhai Shaikh, who has deposed in respect of injuries found on prosecution witness no. 6 Rajendrasinh and he has also proved the medical certificate issued by him regarding injuries to Rajendrasinh, which is at Ex.14.

#. The defence of the accused is of total denial and according to him he has been falsely involved in a serious offence and he has not committed any offence.The defence further shows that there was an altercation between deceased Mina and her brother Rajendrasinh and because of such altercation, Mina had committed suicide and to avoid any criminal liability, Parvatsinh complainant - father of the deceased and Rajendrasinh brother of deceased with the help of police has falsely involved the accused in these offences.

#. The learned Assistant Sessions Judge, Nadiad has after considering the evidence led by the prosecution had recorded finding by holding that the prosecution has proved the case that the accused has entered into the house of the complainant Parvatsinh with a view to commit

rape on Mina and also had an intention to give injuries to Rajendrasinh. The learned Judge has also further held that the prosecution has proved that the accused has committed rape on Mina against the will of deceased Mina and thereby, committed an offence of rape. He has further held that the prosecution has proved that the accused has with intention had caused simple injuries to witness Rajendrasinh. The learned Trial Judge has recorded following findings after appreciating the evidence :-

(i) on the day of incident, the complainant Parvatsinh and his wife had gone to village Gothda and deceased Mina and his brother were alone in the house.

(ii) Rajendrasinh - brother of the deceased Mina at about 2 P.M. on the date of incident had come from his grand mother's house to his house and when he had gone to take water, he heard the shout of his sister Mina @ Baki saying that "Bapu" "Bapu".

(iii) After hearing the shout of her sister, he went towards first floor of the house and at that time, accused tried to run away and Rajendrasinh has caught him. There was a scuffle between accused and Rajendrasinh, in which, Rajendrasinh sustained injuries on middle finger and he lost 1/2 nail of his right hand finger.

(iv) Immediately, after the incident, Minaben had committed suicide.

(v) From the knicker of deceased Mina, there is a blood with semen of human blood and semen was found and in the knicker of accused, there was blood with semen was found.

Learned Assistant Sessions Judge has accordingly while accepting the case of the prosecution has held that the accused has entered into the house of the complainant with an intention to commit rape and the accused has against the will of deceased Mina had committed rape and further that the prosecution has proved that the accused has given simple hurt to Rajendrasinh. The learned Assistant Sessions Judge has accordingly convicted the accused for the offences punishable under Sections 376, 323 and 452 of the I.P.C. and after hearing the accused on the point of sentence, the learned Assistant Sessions Judge has convicted the respondent accused for the

offences under Sections 376, 323 and 452 of the I.P.C. and ordered to suffer R.I. for 3 years and fine of Rs.2000/- and in default for fine further R.I. for 6 months for offence under Section 376 of the I.P.C. and ordered to suffer R.I. for 15 days for the offence under Section 323 of the I.P.C. and also ordered to suffer R.I. for 6 months and fine of Rs.500/- and in default of fine to undergo further R.I. for one month under Section 452 of the I.P.C. and the main sentence to run concurrently.

#. Against the said order of conviction and sentence recorded by learned Assistant Sessions Judge, the accused had preferred Criminal Appeal before the Court of learned Additional Sessions Judge, Nadiad. While examining the evidence and the order of conviction recorded by the learned Trial Judge and on considering the contentions raised before him, the Court has while discussing the evidence in detailed, had held that the the prosecution has failed to prove beyond reasonable doubt that the accused has committed rape on Mina as alleged by the prosecution and further held that the prosecution has also failed to prove beyond reasonable doubt that the accused had entered into the house of the victim with preparation of commission of offence and prosecution has also failed to prove beyond reasonable doubt that the accused has caused simple injuries to Rajendrasinh. The learned Judge has also in detailed discussed the evidence of Rajendrasinh - brother of deceased Mina, who has received injuries at the hands of accused and the evidence of Parvatsinh father of deceased Mina - the complainant. The Court has also appreciated the evidence of Dr. Metheve and Dr. Champaklal Patel as well as FSL report on the article of knicker of the deceased Mina and knicker of accused Narendrasinh. The Court has in detailed discussed the evidence in para 9 of the judgement and the learned Appellant Court has rightly held that the evidence led by the prosecution is not reliable and acceptable. According to the prosecution case and as found from the evidence of Rajendrasinh, when he had gone to his house to take water and at that time, he heard the shout of his sister Meena saying "Bapu Bapu" and this incident has occurred at 2 p.m. Rajendrasinh is aged about 23 years at the relevant time and he was studied in Anand Arts College in Third year B.A. Considering the prosecution case, Rajendrasinh had ample opportunity to save her sister Mina as, as found from his evidence that there was a scuffle between him and Narendra accused in the house itself and during that time, his sister Mina has left the house and accordingly, when he went out to inquire about Meena, he has contacted

his uncle, who is residing near his house and more particularly, he came to know that his sister has fallen in well, he has not made any attempt to inform immediately to his near relative namely his uncle or other village people. Normal conduct of a person in such a situation is to inform the village people or to the close relative, to take all steps to take out her sister Meena from well and to save her life and on the contrary, as found from his evidence, his conduct shows that though, he came to know that his sister has fallen in well, he has not informed this fact to his close family members or police persons or village people. As found from the evidence that at that relevant time, even the SRP persons are also posted at the village at Bhalej. There are some contradictions in the evidence of Rajendrasinh and the same are also proved from the evidence of the Investigating Agency.

##. It is further found from the evidence of Shri Parvatsinh - father of the deceased - complainant, suggests that when he came to know about the incident from his son, when he return from village Gothda at about 4 PM on the same day on 31.12.1989, he has not informed or reported about the incident to the police station at village Bhalej, he went to Umreth Police Station for lodging and on reading the entire evidence of Pruthvisinh, his conduct is also found unnatural.

##. I am not discussing in detail about the evidence of the prosecution witnesses as well as the documentary evidence led by the prosecution and this being an acquittal appeal and on examining the findings recorded by the learned Appellate Judge, while deciding the appeal, has given cogent reasons, which is based on appreciation of the evidence and he has given cogent reasons in his judgement at para 7 and 8 and the learned Additional Sessions Judge has on reappreciation of evidence, while allowing the appeal of the accused, has acquitted the accused by giving benefit of doubt and in view of catena of decisions of this Hon'ble Court as well as of the Apex Court, when the learned Additional Sessions Judge, even after reappreciating the evidence has while acquitting the accused, has acquitted the accused by giving benefit of doubt. It will be difficult for this court to upset the said findings recorded, which is based on reappreciation of evidence and accordingly, while deciding this appeal and on examining the evidence and the order of acquittal recorded by the learned Additional Sessions Judge by setting aside the order of conviction and sentence recorded by the Assistant Sessions Judge, Nadiad, I am of the view that no error is

committed while deciding the appeal filed by the respondent accused and there is no error in passing such order by acquitting the accused by giving benefit of doubt. No other points were advanced.

##. Accordingly, present appeal is dismissed. The judgement and order dated 28.5.1993 recorded by the learned Additional Sessions Judge, Nadiad in Criminal Appeal No. 22 of 1991 is hereby confirmed. Bail bonds are ordered to be cancelled.

(D.K.Trivedi, J.)
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